

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3887

13 **TANNA LEE PANEK**
14 **2335 Sanquill Avenue**
15 **Thermal, CA 92274**

A C C U S A T I O N

16 **Pharmacy Technician Registration**
No. TCH 47032

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about April 14, 2003, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 47032 to Tanna Lee Panek (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on September 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 4301 of the Code states:

6 The board shall take action against any holder of a license who is guilty of
7 unprofessional conduct or whose license has been procured by fraud or
8 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
9 not limited to, any of the following:

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11 (h) The administering to oneself, of any controlled substance, or the use of any
12 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
13 dangerous or injurious to oneself, to a person holding a license under this chapter, or
14 to any other person or to the public, or to the extent that the use impairs the ability of
15 the person to conduct with safety to the public the practice authorized by the license.

16

17 (k) The conviction of more than one misdemeanor or any felony involving the
18 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
19 or any combination of those substances.

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of a
22 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction shall
26 be conclusive evidence only of the fact that the conviction occurred. The board may
27 inquire into the circumstances surrounding the commission of the crime, in order to
28 fix the degree of discipline or, in the case of a conviction not involving controlled
substances or dangerous drugs, to determine if the conviction is of an offense
substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

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1 **REGULATORY PROVISIONS**

2 10. California Code of Regulations, title 16, section 1769, states:

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4 (b) When considering the suspension or revocation of a facility or a personal
5 license on the ground that the licensee or the registrant has been convicted of a crime,
6 the board, in evaluating the rehabilitation of such person and his present eligibility for
7 a license will consider the following criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or offense(s).

11 (4) Whether the licensee has complied with all terms of parole, probation,
12 restitution or any other sanctions lawfully imposed against the licensee.

13 (5) Evidence, if any, of rehabilitation submitted by the licensee.

14 11. California Code of Regulations, title 16, section 1770, states:

15 For the purpose of denial, suspension, or revocation of a personal or facility
16 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
17 Professions Code, a crime or act shall be considered substantially related to the
18 qualifications, functions or duties of a licensee or registrant if to a substantial degree
19 it evidences present or potential unfitness of a licensee or registrant to perform the
20 functions authorized by his license or registration in a manner consistent with the
21 public health, safety, or welfare.

22 **COSTS**

23 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

27 **FIRST CAUSE FOR DISCIPLINE**

28 **(April 29, 2010 Criminal Conviction for DUI With Great Bodily Injury on February 8, 2010)**

13. Respondent has subjected her registration to discipline under sections 490 and 4301,
subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the
qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about April 29, 2010, in a criminal proceeding entitled *People of the
State of California v. Tanna Lee Panek*, in Riverside County Superior Court, case number

1 INF10000436, Respondent was convicted on her plea of guilty to violating Vehicle Code section
2 23153, subdivision (a), driving under the influence of alcohol and causing great bodily injury to
3 two persons, a felony. The court found true the enhancement that both victims were 70 years of
4 age or older, within the meaning of Penal Code sections 12022.7, subdivision (c) and 1192.7,
5 subdivision (c)(8). A second count of driving with a blood alcohol concentration (BAC) of .08 or
6 more and causing great bodily injury (Veh. Code, § 23153, subd. (b)), was dismissed pursuant to
7 a plea bargain.

8 b. As a result of the conviction, on or about June 22, 2010, the court ordered
9 Respondent incarcerated for the low term of one year and four months as to the principal count,
10 and the upper term of five years for the enhancement, to run consecutively, for a total sentence of
11 six years and four months. Respondent received credit for 13 days.

12 c. The facts that led to the conviction are that on or about the afternoon of
13 February 8, 2010, the Riverside County Sheriff's Department responded to a collision at a Palm
14 Desert intersection. The victims, a 74-year-old man and his 72-year-old companion, were driving
15 on Highway 74 when Respondent entered an intersection from a side street and into the path of
16 the victims. The victim driver was not able to stop in time and collided with Respondent's
17 vehicle. All three were taken to a local hospital. At the hospital, a sheriff's deputy contacted
18 Respondent. He immediately noticed the odor of an alcoholic beverage on her breath.
19 Respondent denied consuming alcohol and told the deputy the last time she drank was one or two
20 weeks earlier. Since Respondent was wearing a neck brace as a precautionary measure, the
21 deputy was only able to conduct a horizontal gaze nystagmus test, which revealed a marked lack
22 of smooth pursuit and nystagmus at maximum deviation. Respondent provided a breath sample
23 for the preliminary alcohol screening test which was analyzed with a BAC of .29 percent.
24 Respondent was arrested for driving under the influence causing injury. As a result of
25 Respondent's actions, her elderly male victim suffered a punctured lung and multiple rib
26 fractures, and his elderly female passenger suffered fractures of her C1 and C2 vertebrae, as well
27 as fractures of her sternum and right forearm. Respondent was treated for minor injuries and
28 released.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

3 14. Respondent has subjected her registration to disciplinary action under section 4301,
4 subdivision (h) of the Code in that on or about February 8, 2010, Respondent used alcohol to an
5 extent that was dangerous and injurious to herself, and others, when she drove a vehicle with a
6 substantially high BAC of .29 percent, and caused a collision resulting in serious injuries to two
7 elderly victims, as described in paragraph 13, above.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Felony Conviction Involving Alcohol)**

10 15. Respondent is subject to disciplinary action under section 4301, subdivision (k) of the
11 Code in that on or about April 29, 2010, in Riverside County Superior Court, Respondent was
12 convicted of driving under the influence of alcohol and causing great bodily injury to two elderly
13 persons, in violation of Vehicle Code section 23153, subdivision (a) as described in paragraph
14 13, above.

15 **PRAYER**

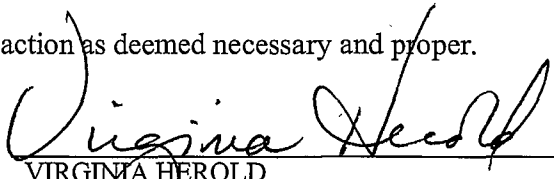
16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Pharmacy issue a decision:

18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 47032,
19 issued to Tanna Lee Panek;

20 2. Ordering Tanna Lee Panek to pay the Board of Pharmacy the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3;

23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 4/27/11

25 
26 VIRGINIA HEROLD
27 Executive Officer
28 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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